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NOT TO BE PUBLISHED

Commonwealth of Kentucky

Court of Appeals

NO. 2008-CA-002387-WC

WOLFORD & WETHINGTON
LUMBER

APPELLANT

v. PETITION FOR REVIEW OF A DECISION
OF THE WORKERS' COMPENSATION BOARD
ACTION NO. WC-07-86299

JOHNNY DERRINGER;
HONORABLE LAWRENCE SMITH,
ADMINISTRATIVE LAW JUDGE;
AND WORKERS' COMPENSATION
BOARD

APPELLEES

OPINION
AFFIRMING

** ** * * * * *

BEFORE: LAMBERT, MOORE, AND VANMETER, JUDGES.

VANMETER, JUDGE: Wolford & Wethington Lumber (Wolford) appeals from
an opinion rendered by the Administrative Law Judge (ALJ), and affirmed by the

Workers' Compensation Board (the Board), awarding Johnny Derringer benefits for a work-related injury. For the following reasons, we affirm.

In April 2007, Derringer experienced severe leg and back pain while operating a standard-shift flatbed truck for his employer, Wolford. He sought medical treatment and an MRI scan ultimately revealed a lumbar disc herniation. Derringer underwent surgery and returned to work in September 2007. After five weeks, he informed his boss that he was going to have to “quit driving that truck because that clutch is too hard to mash down.” He described the clutch as being very stiff and stated that he had to switch gears frequently since it was a ten-speed truck.

Derringer, who was unemployed after leaving Wolford, sought compensation for his injury. The ALJ found that his injury was work-related and ordered Wolford to pay temporary total disability (TTD) benefits from the date of Derringer's injury until he returned to work in September 2007. The ALJ also ordered Wolford to pay the medical bills incurred for treatment of Derringer's injury. Wolford appealed the ALJ's decision to the Board, which affirmed. Wolford now appeals the Board's decision, which we affirm.

Since the ALJ found in favor of Derringer, who bore the burden of proving that his injury was work-related, Derringer must “show that there was some evidence of substance to support the finding, meaning evidence which would permit a fact-finder to reasonably find as it did.” *Special Fund v. Francis*, 708 S.W.2d 641, 643 (Ky. 1986). Derringer has made the requisite showing.

Three issues are before us on appeal. First, Wolford claims that the Board erred in finding that evidence of substance supported the ALJ's finding of a work-related injury. We disagree. For purposes of a worker's compensation claim, an "injury" is "any work-related traumatic event or series of traumatic events, including cumulative trauma, arising out of and in the course of employment which is the proximate cause producing a harmful change in the human organism evidenced by objective medical findings." KRS¹ 342.0011(1). The ALJ found that Derringer sustained an "injury" within the meaning of KRS 342.0011(1) based on Derringer's deposition testimony, his testimony at the formal hearing before the ALJ, and the medical reports of Drs. Hayes and Templin.

Dr. Hayes, who initially examined Derringer on the day of his injury, ultimately opined that his injury was work-related. Dr. Hayes' report reads:

Mr. Derringer was working at the time of his injury and has not reported to me any other injury. On the date he hurt himself, he reported that he was feeling fine driving his truck and then he was in intense pain. His employer had to come pick him up and when he was brought to my office he could not stand or sit. He had to lay down. For the above reason, it is my opinion that his condition is work-related.

Dr. Templin, who also examined Derringer, opined that within reasonable medical probability, Derringer's injury was the cause of his complaints. Dr. Templin's explanation of how the work-related injury caused the harmful change in the human organism was: "[l]umbar disc herniation at L3-L4 while operating a standard shift truck on April 26, 2007." Based on these medical

¹ Kentucky Revised Statutes.

opinions and the testimony of Derringer, the Board did not err by finding that the ALJ's determination of a work-related injury was supported by evidence of substance.

Second, Wolford asserts that the Board erred by finding that evidence of substance supported the ALJ's award of TTD benefits. We disagree. KRS 342.0011(11)(a), which addresses a TTD award, provides: "[T]emporary total disability (TTD) means the condition of an employee who has not reached maximum medical improvement (MMI) from an injury and has not reached a level of improvement that would permit a return to employment[.]"

Here, the ALJ found that Derringer reached MMI and was entitled to TTD benefits for the period between his injury in April 2007 and his return to work in September 2007. This award is supported by evidence of substance. Not only did Dr. Templin opine that Derringer could not return to the position he held with Wolford at the time of his accident, or engage in any activity requiring repetitive use of his left foot and leg, but Dr. Kriss opined that Derringer would not reach MMI until one year after his June 2007 surgery. As Derringer's return to work in September 2007 exceeded both doctors' expectations, the Board did not err by affirming the ALJ's determination that Derringer was entitled to TTD benefits until that time.

With regards to the third and final issue, Wolford contends that the Board erred by affirming the ALJ's determination that the 45-day billing

requirement under KRS 342.020(1) did not bar compensability of the medical benefits awarded in this case. We disagree with Wolford's contention.

KRS 342.020(1) addresses employer payment of the costs of work-related medical treatment. It provides, in part, as follows:

The employer, insurer, or payment obligor acting on behalf of the employer, shall make all payments for services rendered to an employee directly to the provider of the services within thirty (30) days of receipt of a statement for services The provider of medical services shall submit the statement for services within forty-five (45) days of the day treatment is initiated and every forty-five (45) days thereafter, if appropriate, as long as medical services are rendered.

In the case of *R.J. Corman R.R. Const. v. Haddix*, 864 S.W.2d 915 (Ky. 1993), the Kentucky Supreme Court held that the 30-day requirement under KRS 342.020(1) “applies to medical statements received by an employer *after* an ALJ has determined that said bills are owed by the employer.” *R.J. Corman* at 918. (emphasis added). The court reasoned that “[u]ntil an award has been rendered, the employer is under no obligation to pay any compensation, and all issues, including medical benefits, are justiciable.” *Id.*

Wolford argues that *R.J. Corman* does not apply here because the court did not speak to the issue of the 45-day requirement; thus the case is not directly on point. However, we hold that the court's rationale in *R.J. Corman* applies; until an award was rendered by the ALJ, Wolford was under no obligation to pay any compensation, and all issues, including medical benefits were

justiciable. Thus, the Board did not err in affirming the ALJ's determination that the 45-day requirement under KRS 342.020(1), same as the 30-day requirement, did not bar compensability of the medical benefits awarded.

The opinion of the Board is affirmed.

ALL CONCUR.

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DERRINGER:

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